IN THE HIGH COURT OF JUDICATURE
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MR JUSTICE J.CHELAMESWAR
and
THE HON'BLE MR JUSTICE D.APPA RAO

WRIT PETITION NO :22243 of 2006

Dated: 27th October, 2006.

Between:

M/s. u.S.Engineering Private Limited, 109, Amurthaville, Rajbhavan Road, Somajiguda, Hyderabad.

..... PETITIONER

AND

Commercial Tax Officer, Hyderguda Circle, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND
THE HON'BLE SRI JUSTICE D.APPA RAO

W.P.NO.22243 OF 2006

ORAL ORDER:
(Per the Hon'ble Sri Justice J.Chelameswar)

This writ petition is filed with the prayer as follows:

> " For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, order or direction, more particularly in the nature of Writ of Mandamus, declaring the order passed by the Additional Commissioner (CT)(Legal), Hyderabad, in No.L.III(1)/706/2006 dated 28.09.2006 as illegal, void and inoperative and set aside the same; and (ii) interdict the respondent authorities from collecting balance disputed tax of Rs.29,36,966/- until disposal of the appealNo.A/74/2006-07 by the Deputy Commissioner (CT), Secunderabad Division, Hyderabad, 2nd respondent herein."

The petitioner is a Private Limited Company and a registered dealer under the A.P.G.S.T. Act. It appears that the petitioner supplied certain material to the Railways for a sum of Rs.9.73 crores during the assessment year
2002-03. While the petitioner claims that it was a sale of goods in execution of a works contract in favour of the Railways, the respondents maintained it as a plain and

simple sale of goods. Be that as it may, the 1st respondent by his order dated 18-02-2006 assessed the liability of the petitioner, for the abovementioned assessment year under the Act, treating the transaction to be one of a sale of goods. Aggrieved by the same, the petitioner carried the matter in appeal before the 2nd respondent herein along with an application seeking stay of recovery of the tax during the pendency of the appeal. By an order dated
17-08-2006, the said stay application was rejected. The petitioner carried the matter further in a revision before the 3rd respondent herein, unsuccessfully. Thereafter, the 1st respondent issued a notice dated 20-10-2006, indicating that the bank accounts and the sureties of the petitioner would be attached if the demand is not paid immediately. Hence, the present writ petition.

Heard the learned Government Pleader for Commercial Tax.

In view of the pendency of the appeal, we do not propose to go into the details of the matter, but, we are of the opinion that the ends of justice would meet by disposing of the writ petition at this stage directing the respondents not to recover the disputed tax, for the abovementioned assessment year, during the pendency of the appeal referred to above, on condition of the petitioner depositing 50% of the disputed tax within a period of six (6) weeks from today.

The amount of tax, if any, already paid towards the abovementioned disputed tax, shall be given credit to while computing the abovementioned 50% of the disputed tax.

Accordingly, with the above directions, the writ petition is disposed of at the stage of admission.

J.Chelameswar, J

D.Appa Rao, J

27th October 2006
mrk